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OEMS ADVISORY

Out-of Hospital Treatment of Minors

I. Introduction to Issue

In Massachusetts a minor is someone under the age of eighteen (18), with a few exceptions explained below. EMTs encounter problems when called to treat minors, where there is no one legally authorized to consent to treatment or to refuse treatment. This particular problem is found most often at the scene of a motor vehicle crash involving 16 and 17 year olds, who do not want to be treated or transported. The following is a guideline to assist EMTs in handling such situations. While the guideline should assist in evaluating and handling such issues, it will not resolve every situation and decisions vary based on the specific facts in each instance. The EMT should share the decision-making responsibility with other EMTs, supervisory personnel, and/or medical control physician. Services should review specific questions with their own legal counsel and meet with local police to work out cooperative solutions. Documentation is critical throughout the analysis.

II. Guideline

1. Assess whether there is an emergency. Apply Doctrine of Implied Consent:

- a. EMTs are required to treat and transport any minor who clearly has an emergency condition. See, 105 CMR 170.255 (A).
- b. Emergency is when: the injury or illness is a threat to life; the failure to treat would cause irreversible injury; or the delay in treatment would adversely endanger the life, limb, or mental well-being of the patient. In assessing whether there is an emergency, particularly with regard to motor vehicle crashes, EMTs should include the mechanism of injury in their analysis. Including the mechanism of injury in the analysis may result in an injury that might not otherwise be considered an emergency to be classified as an emergency, allowing transport without actual consent, relying on implied consent.
- c. As a matter of public policy, consent is implied by law in an emergency because inaction may result in harm to the patient. Therefore, in an emergency, it is not necessary to obtain explicit consent to treat and transport, since consent is implied.

- d. Determining the conditions that actually constitute an emergency in any given situation is a determination left to the EMT based on the assessment of the patient, including mechanism of injury. If there is any question whether or not an emergent condition exists, the EMT should (if possible) consult other EMTs at the scene, EMS supervisory personnel, and/or a medical control physician.
 - e. EMTs must fully document all factors leading to the conclusion that the injury or illness constitutes an emergency, including the names of individuals with whom the EMT consulted.
2. Assess whether there is an injury or illness:
- a. 105 CMR 170.255 (A) provides that an EMT has a responsibility to treat and transport patients who have a critical or unknown illness or injury (including mechanism of injury).
 - b. After assessment, if there is no illness or injury, there is no obligation to transport. Remember to include the mechanism of injury in the analysis.
 - c. Document the assessment and basis for the decision not to transport.
3. If there is an injury or illness, but no emergency, assess the age and legal status of the individual:
- a. M.G.L. c. 231, § 85P provides that age 18 is the age of majority in the Commonwealth.
 - b. M.G.L. c. 112, § 12F defines individuals under 18 as emancipated minors if they are (i) married, widowed or divorced; (ii) the parent of a child; (iii) a member of the armed forces; (iv) pregnant or believes herself to be pregnant; (v) living separate and apart from a parent/legal guardian and managing his or her own financial affairs; or (vi) under the reasonable belief that he or she is suffering from or has come into contact with a disease defined as dangerous to the public health.
 - c. If the individual is 18 or the EMT can determine that he or she is an emancipated minor, the individual can make decisions as to his or her treatment or decline treatment. Several of the emancipated minor categories will be difficult, if not impossible, to determine in the field.
 - d. The EMT must clearly document in the trip record how the EMT derived the age or emancipation status of the patient.
4. If the individual is under 18 or not emancipated, attempt to obtain consent if the patient refuses to be transported:
- a. Consent is most often an issue when patients are refusing to be transported. Although minors also cannot legally consent to transport, if all parties are in agreement that the minor should be transported, there is likely to be no issue. Successful cases alleging battery are rare. EMTs should carefully consider all factors presented and use their best judgment in making decisions and document clearly all decisions.
 - b. If feasible, contact the parent or guardian or school officials if they are responsible for the minor.
 - c. If possible, contact other family members or responsible party to obtain consent, if parent or guardian is unavailable. Police, if on scene may assist in making calls. The increased presence of cell phones may ease this task.
 - d. Fully inform the minor of the full extent of the injury, the mechanism of injury, the potential outcomes, the need for evaluation by a physician and encourage transport;
 - e. Contact medical control for further instruction or discussion with the minor;
 - f. Document all attempts to obtain consent and document oral consent, if provided over the phone.
 - g. Contact supervisory personnel of ambulance service.

5. Options where minor refuses transport and consent cannot be obtained:
 - a. Options may depend on the nature of the injury, whether law enforcement is present and is working cooperatively with EMTs, and such other factors as the urgency to return the ambulance to service.
 - b. The police may place individuals in protective custody if they are deemed to be a danger to themselves or others.
 - c. Police could transport the minor to station to await parent or guardian.
6. EMT must evaluate the situation, use discretion, and document all aspects of decision.
 - a. If there is any question, EMTs should err toward treatment and transport. Successful lack-of-consent and battery cases against EMTs are rare.
 - b. Documentation is critical at all points in this guideline. Document all decisions. Document all conversations with the minor and note all witnesses to the conversation and all consultations.
7. Develop service policies:
 - a. Review guidelines within each ambulance service and with legal counsel for the service. Most issues related to minor consent involve concerns regarding liability. These issues should be fully evaluated with ambulance service counsel.
 - b. Meet with public safety agencies to develop cooperative guidelines including, but not limited to the transport of minors.